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09/918,552	08/01/2001	Hyun-Sook Kim	P56564	3841

7590

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EXAMINER

PERRIN, JOSEPH L

ART UNIT

PAPER NUMBER

1746

DATE MAILED: 11/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/918,552

Applicant(s)

KIM ET AL.

Examiner

Joseph L. Perrin, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 and 24-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3 and 6-16 is/are allowed.
- 6) ☒ Claim(s) 24-25, 29-32, 34 is/are rejected.
- 7) ☒ Claim(s) 4-5, 26-28, 33 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Status of Application***

1. In view of applicant's amendment filed 30 September 2003 (Paper No. 4), the status of the application is as follows:

### ***Drawings Objections***

The corrected drawings have been approved by the Examiner.

### ***Claims Objections***

The objection of claims 1-3, 6 and 11-15 has been withdrawn in view of applicant's arguments. See below Response to Arguments.

The objection of claims 4-5 under 37 CFR 1.75(c) has been maintained for reasons of record. See below Response to Arguments.

### ***35 U.S.C. §102(b) and 35 U.S.C. §103(a) Rejections***

The rejections of claims 1-3 & 6-16 are withdrawn in view of applicant's amendment incorporating previously indicated allowable subject matter of dependent claim 17 into independent claim 1.

### ***Claims 4, 5, 14 and 15***

The objection of claims 4 and 5, as noted above under 37 CFR 1.75(c), are objected to for failure to further limit a previous claim. Thus, these claims are not rejected and have not been further treated on the merits since they do not further limit the claim from which they depend.

The rejection of claims 14 and 15, cited on the Office action cover sheet and in the rejection over Psarski, was inadvertently omitted in the 102 rejection title regarding Psarski. Moreover, it is noted that the apparatus limitations in rejected claim 13 are substantially the same as that of claims 14 and 15. It is further noted that applicant's aforementioned amendment places claims 14 and 15 in condition for allowance.

### ***Response to Arguments***

2. Applicant's arguments filed 30 September 2003 have been considered but they are not fully persuasive.

### ***Claims Objections***

3. The objection of claims 1-3, 6 and 11-15 has been withdrawn in view of applicant's arguments. However, it is noted that the basis for the objection was attributed to applicant's claims language which were not clearly set forth in clarifying whether applicant was attempting to claim the apparatus or the apparatus and method steps combined. It is improper to include method steps in apparatus claims, as shown in MPEP 2173.05(p)(II):

A single claim which claims both an apparatus and the method steps of using the apparatus is indefinite under 35 U.S.C. 112, second paragraph. In Ex

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parte Lyell, 17 USPQ2d 1548 (Bd. Pat. App. & Inter. 1990), a claim directed to an automatic transmission workstand and the method steps of using it was held to be ambiguous and properly rejected under 35 U.S.C. 112, second paragraph.

Such claims should also be rejected under 35 U.S.C. 101 based on the theory that the claim is directed to neither a "process" nor a "machine," but rather embraces or overlaps two different statutory classes of invention set forth in 35 U.S.C. 101 which is drafted so as to set forth the statutory classes of invention in the alternative only. *Id.* at 1551.

However, applicant's clarification that the instant claims limitations "merely set forth the movements, actions or results of the structure previously recited" are persuasive and the limitations are considered proper. However, such limitations are considered intended use and not "functional statements" as asserted by applicant. Specifically, applicant's descriptive operational language immediately following the structure of the instant claims, (e.g. "a tank accommodating an article..."; "a heater heating the water..."; "a circulation pump circulating the water..."; etc.) is considered intended use of the apparatus and given little patentable weight. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). It is also noted that expressions such as "for" typically clarify applicant's intentions in such matters. Applicant is reminded that functional language is not merely how an apparatus operates, but rather how a means or step performs a specified function without the recital of structure, material, or acts in support thereof. A functional limitation is an attempt to define something by what it does, rather than by what it is. *In re Swinehart*,

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439 F.2d 210, 169 USPQ 226 (CCPA 1971). See also, for instance, 35 USC 112, sixth paragraph.

4. The objection of claims 4-5 under 37 CFR 1.75(c) has been maintained for reasons of record. Applicant argues the claimed language is a proper functional limitation, further reciting MPEP 2173.05(g) including case law *In re Swinehart*, 439 F.2d 210, 169 USPQ 226 (CCPA 1971). Applicants point to *In re Swinehart* standing for the proposition that there is nothing wrong with the use of functional language. A careful reading of *Swinehart* will reveal that the indicated case is distinguishable from the current situation. In *Swinehart* the court held that the recitation of "transparent to infrared rays", while language was functional, it was precise and definite enough to provide clear-cut indication of scope of subject matter. This however is not the case in the present situation. In the instant case, applicant is attempting to claim the operation of the claimed apparatus in dependent claim form, which is entirely different than claiming function in place of structure as in *Swinehart* (see above for distinguishing between "functional" language and intended use). Moreover, this is properly described in 35 USC 112, sixth paragraph under means plus function language. As best understood, applicant is claiming an apparatus and not the method of using. Since applicant's claims are directed to an apparatus, applicant's attempt to claim the operation of the apparatus in a dependent claim (e.g. method of using) without further limiting the apparatus is considered improper and fails to further limit the claimed

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apparatus. Accordingly, since there is not a proper apparatus limitation further limiting the apparatus to examine, claims 4-5 have not been further treated on the merits.

5. Regarding applicant's confusion in the phrase "future intended use", it is noted that the phrase is synonymous with "intended use" since it is implicit that "intended use" is directed to the future use. The Examiner regrets any confusion with the term "future".

6. Further, applicant's allegation that "the examiner argued that 'tank for accommodating' is not a future intended use but 'tank accommodating' is a future intended use" is wholly inaccurate. It appears applicant is confused between the two different claims objections. The intended use of objected claims 1 and 6-10 (e.g. "tank accommodating"), while given little patentable weight, follows a positive and structural limitation in the claimed apparatus, which was given full weight. However, the objected claims 4-5 solely rely on the intended use of the claimed apparatus without any further positive limitation of the claimed apparatus. Moreover, it is noted that neither "tank for accommodating" nor "tank accommodating" are given much patentable weight in regard to the operation of the tank. Thus, at the least both are considered intended use of the tank and not necessarily "functional statements".

*New claims 24-34*

7. Re claims 24-34, applicant's arguments are directed to new claims that are not currently rejected and, therefore, are not considered to be properly before the office.

***Claim Objections***

8. Claims 4-5 & 26-28 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The claims are directed to intended use (e.g. how the heating part is controlled and what washing cycles are selected, respectively) and fail to provide a proper limitation further limiting to the claimed apparatus. Accordingly, the claims have not been further treated on the merits.

***Claim Rejections - 35 USC § 103***

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 24, 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 3,927,972 to Kawamura *et al.* (hereinafter "Kawamura") in view of US 5,960,804 to Cooper *et al.* (hereinafter "Cooper").

Kawamura discloses a article treating apparatus including a tank 6 with a first space and a second space separated by a partition with at least one hole 5, a heater 10 at the below part of the tank, a circulation system including circulation pump 7 between a suction pipe (first pipe) guiding water from the second space to the pump, a discharge pipe (second pipe) with at least one spray hole and guiding water from the pump to the first space, a spray plate with



a plurality of holes 5, and wherein the suction pipe may be higher than the height of the heating part (see entire reference of Kawamura, for instance, Figures 1-4 & 7, and col. 4, line 22 *et seq.*). Kawamura also discloses a cabinet (outside tank 12) supporting the washing tank (inside casing 11); washing articles with hot water; and the first pipe higher than the heater (see, for instance, col. 4, lines 59-61; col. 15, line 11 *et seq.*; and Figure 4). However, Kawamura does not expressly disclose the washing machine having an input unit and controller for selecting and operating a washing cycle.

Cooper teaches that it is known to provide a washing machine with an input unit 11/11a to select a desired washing cycle to control various washing and drying cycles based on various operating conditions, and using a controller 14 to drive the various components and functions including the heater and pump (output block 16) for the purpose of automatically controlling an appliance based on various factors including temperature (see entire reference of Cooper, for instance, col. 2, lines 30-34; col. 3, line 5 *et seq.*). Therefore, the position is taken that a person of ordinary skill in the art at the time the invention was made would have been motivated to modify the washing machine of Kawamura, with the automated input unit and controller of Cooper for the purpose of automatically controlling a washing cycle temperature.

Moreover, the prior art is replete with teachings of controlling such wash systems by hand, *i.e.* manually turning on/off parts of the washing machine such as pumps and heaters to achieve desired cleaning. Therefore, it would have

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been obvious to one having ordinary skill in the art at the time the invention was made to automate the control of the heater and pump to achieve desired temperature, since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art. *In re Venner*, 120 USPQ 192.

11. Claims 24, 29-32 & 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 955,993 to Psarski in view of Cooper (cited above).

Psarski discloses a textile treatment apparatus including a tank, a heater 6 at the bottom of the tank, a circulation system including circulation/drain pump 12, circulation pipes having suction pipes 20/21 and discharge pipe 10 with at least one spray hole (outlet), the suction pipe 20 being higher in height than the heater, and a drain pipe 20'/13 and drain valve 20°/14 connected between a water drain source and the tank/suction pipe 20 (see entire reference, for instance, Figure 1, and col. 2, line 105 through col. 5, line 52). However, Psarski does not expressly disclose the washing machine having an input unit and controller for selecting and operating a washing cycle.

Cooper teaches that it is known to provide a washing machine with an input unit 11/11a to select a desired washing cycle to control various washing and drying cycles based on various operating conditions, and using a controller 14 to drive the various components and functions including the heater and pump (output block 16) for the purpose of automatically controlling an appliance based

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on various factors including temperature (see entire reference of Cooper, for instance, col. 2, lines 30-34; col. 3, line 5 *et seq.*). Therefore, the position is taken that a person of ordinary skill in the art at the time the invention was made would have been motivated to modify the washing machine of Psarski, with the automated input unit and controller of Cooper for the purpose of automatically controlling a washing cycle temperature.

Moreover, the prior art is replete with teachings of controlling such wash systems by hand, *i.e.* manually turning on/off parts of the washing machine such as pumps and heaters to achieve desired cleaning. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to automate the control of the heater and pump to achieve desired temperature, since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art. *In re Venner*, 120 USPQ 192.

***Allowable Subject Matter***

12. Claims 1-3 & 6-16 are allowed.
13. Claim 33 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
14. The following is a statement of reasons for the indication of allowable subject matter:

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The closest prior art of record fails to teach each and every limitation of the instant invention. Specifically, the closest prior art fails to teach the claimed washing machine further having a lid/cover with pushing projections protruding inward the heating tank for keeping textiles submerged in the tank, which is disclosed as an essential element of claimed invention, as described in claims 1 & 33. For at least the foregoing reasons, claims 1 & 33 are believed to recite patentable subject matter.

### ***Conclusion***

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

16. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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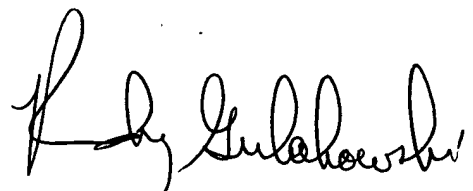
17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph L. Perrin, Ph.D. whose telephone number is (703)305-0626. The examiner can normally be reached on M-F 7:30-5:00, except alternate Fridays.

18. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy P. Gulakowski can be reached on (703)308-4333. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

19. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.

Joseph L. Perrin, Ph.D.  
Examiner  
Art Unit 1746

jlj

  
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